



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-MB-2011-N245]

[FXMB12320100000P2-123-FF01M01000]

Golden Eagles; Programmatic Take Permit Application; Draft Environmental Assessment; West Butte Wind Project, Crook and Deschutes Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We have received an application under the Bald and Golden Eagle Protection Act (BGEPA) from West Butte Wind Power, LLC, for a programmatic permit for the take of golden eagles. If issued, the permit would be the first programmatic permit issued under our new permitting regulations. We invite public comment on a draft environmental assessment (DEA), which evaluates alternatives for this permit application.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may download a copy of the DEA on the Internet at <http://www.fws.gov/pacific/migratorybirds/nepa.html>. Alternatively, you may use one of the methods below to request hard copies or a CD-ROM of the documents. Please specify the “DEA for the West Butte Wind Project” on all correspondence.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email:* pacific_birds@fws.gov. Include “DEA for the West Butte Wind Project” in the subject line of the message.
- *U.S. Mail:* Please address written comments to Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 911 NE 11th Ave, Portland, OR 97232.
- *Fax:* Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, 503-231-2019, Attn.: DEA for the West Butte Wind Project.

FOR FURTHER INFORMATION CONTACT: Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, U.S. Fish and Wildlife Service, 503-231-2019 (phone); pacific_birds@fws.gov (email, include “DEA for the West Butte Wind Project” in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service is considering an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-d; BGEPA) for a programmatic golden eagle (*Aquila chrysaetos*) take permit from West Butte Wind Power, LLC. The company

plans to develop the West Butte wind-power project in central Oregon, and there is a risk of eagle fatalities as a result of the operation of this facility. The application includes an avian and bat protection plan combined with an eagle conservation plan that describes actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles. The eagle conservation plan was developed in collaboration with the Service.

The Draft Environmental Assessment (DEA) analyzes the alternatives associated with this permit application in light of our BGEPA permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26. If the results of this analysis lead us to issue this permit, it will be the first programmatic permit issued under these new regulations, as well as the first eagle take permit issued to a wind-energy company.

Background

BGEPA allows us to authorize bald eagle and golden eagle programmatic take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified). Such take must be incidental to actions that are otherwise lawful. BGEPA's implementing regulations define "take" as "to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb individuals, their nests and eggs" (50 CFR 22.3); and "disturb" is further defined as "to agitate or bother a bald or golden eagle to a degree that causes ... injury to an eagle, ... a decrease in its productivity, ... or nest abandonment" (50 CFR 22.3). The West Butte Wind Project potentially will result in one or more

recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

To obtain a programmatic permit under BGEPA and 50 CFR 22.26, the applicant must (1) avoid and minimize take to the maximum extent achievable; (2) conduct adequate monitoring to determine effects; (3) offset through compensatory mitigation any remaining take, such that the net effect on the eagle population is, at a minimum, no change for eagle management populations that cannot sustain additional mortality; and (4) ensure that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Applicant's Proposal

The 104-megawatt (MW) project is to be built in Crook and Deschutes Counties, Oregon. As a result of monitoring studies conducted on the proposed project site, the applicant considers the use of the site by eagles to be low, and has requested in their application a permit for the legal take of “1 to 2 Golden Eagles over the 20 to 30 year life of the project.”

The applicant developed an eagle conservation plan, following recommendations provided by the Service (Draft Eagle Conservation Plan Guidance, January 2011, http://www.fws.gov/windenergy/docs/ECP_draft_guidance_2_10_final_clean_omb.pdf). As recommended in the Service's guidance, the applicant's plan outlines avoidance and minimization measures and advanced conservation practices, assesses risk from pre-

construction monitoring data, makes commitments for mitigating eagle mortalities, and commits to post-construction monitoring. This plan was submitted as part of the permit application, and if we issue the permit following the National Environmental Policy Act (NEPA) process, then the conservation commitments would become conditions of the permit.

The Service independently evaluated the risk of eagle fatalities from the construction of this project and compared that risk to the conservation measures, largely mitigation actions, to which the applicant has committed. This is an essential step in the Service's evaluation of an application for a permit for programmatic take of eagles, since issuing criteria require permitted take to be in compliance with the BGEPA's preservation standard. The Service has interpreted this standard to require maintenance of stable or increasing breeding populations of eagles (74 FR 46836; September 11, 2009). The evaluation of risk and offsetting conservation measures, and the implications for direct, indirect, and cumulative effects under three alternatives, are discussed in detail in the DEA.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit application and comments submitted thereon to determine whether the application meets the permitting requirements under BGEPA, applicable regulations, and NEPA requirements. Upon completion of that evaluation, we will select our course of action.

Public Comments

We invite public comment on the proposed DEA. If you wish, you may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You can ask us in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 668a of the Act (16 U.S.C. 668-668c) and NEPA regulations (40 CFR 1506.6).

Dated: December 19, 2011

Richard Hannan,
Acting Regional Director,
Pacific Region,
Portland, Oregon.

